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No. 82-1127

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1982

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HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner,*

v.

ELIZABETH HALL, *et al.*,  
*Respondents.*

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**BRIEF OF PETITIONER IN REPLY TO  
BRIEF OF RESPONDENTS IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF TEXAS**

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THOMAS J. WHALEN  
*Counsel for the Petitioner*  
*Helicopteros Nacionales*  
*De Colombia, S.A.*  
1030 15th St., N.W.  
Suite 720  
Washington, D.C. 20005  
(202) 289-0500

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Petitioner Helicopteros Nacionales de Colombia, S.A. (hereinafter Helicol) hereby replies to the brief of respondents in opposition to the petition for a writ of certiorari.

**ARGUMENT**

While it is not the function of the Court to resolve factual issues, neither should the Court be influenced by misleading factual statements regarding Helicol's contacts with Texas.<sup>1</sup> For example, the impression is falsely created by respondents that Helicol had employees permanently based in Texas "on a year-round rotation

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<sup>1</sup> Each of these misleading factual statements regarding Helicol's contacts with Texas is specifically addressed in the appendix hereto at pp. 79a-81a. The pagination of the appendix to this reply brief is continued sequentially from the appendix to the petition for writ of certiorari.

basis." Brief of Respondents in Opposition to Petition for Writ of Certiorari (hereinafter Respondents' Brief), p. 4; Appendix to Petition for Writ of Certiorari (hereinafter App. to Petition), p. 3a.

As the record shows,<sup>2</sup> however, the employees of Helicol to which the Supreme Court of Texas had reference were employees of Helicol who came to Texas from Colombia either to deal with Bell Helicopters about the purchase of helicopters, to pick up helicopters purchased from Bell or to take familiarization training in connection with the purchased helicopters. The only employees of Helicol who came to Texas for reasons unconnected with the purchase of Bell helicopters were Mr. Gonzalez who came to Texas in connection with a deposition in this case and Mr. Restrepo of Helicol who had a contract discussion with Williams-Sedco-Horn, which is discussed in both petitioner's and respondents' briefs and is referred to in the opinion of the Supreme Court of Texas.

The statement that Helicol "[h]ad employees in Texas on a year-round rotation basis" is therefore misleading.

The respondents have argued that Helicol's petition involves merely a factual issue which has been resolved in the court below adversely to Helicol, and that there is no real disagreement regarding the applicable law in this case.

However, to the contrary, respondents have in fact spotlighted the important legal issue which this Court should review, in the following manner:

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<sup>2</sup> The record relating to the issue of employees of Helicol in Texas is set forth in the appendix hereto at pp. 82a-107a. Excluded from this record is the evidence and testimony relating to the single meeting which Mr. Restrepo of Helicol had with Williams-Sedco-Horn in Texas.

1. There is no dispute that this case involves a tort cause of action which did not arise from Helicol's contacts in Texas.

2. Respondents agree, citing *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), that where the cause of action does not arise from the contacts of the nonresident defendant in the forum state, *in personam* jurisdiction over the nonresident defendant can attach only if the defendant's contacts with the state are substantial and continuous. Respondents' Brief, p. 5.

3. Respondents agree that purchases in the forum state by an alien corporation cannot by themselves be a basis for *in personam* jurisdiction, at least with respect to a cause of action not arising from such purchases. Stated the respondents: "If an alien corporation wishes to protect itself against the assertion of jurisdiction, it need only limit its activities to mere purchases." Respondents' Brief, p. 6.

4. In concluding that "Helicol's numerous and substantial contacts do constitute 'doing business' in this state" (App. to Petition, p. 7a), the Texas Supreme Court relied on findings that Helicol "[p]urchased substantially all of its helicopter fleet in Forth Worth Texas;" "did approximately \$4,000,000 worth of business in Fort Worth, Texas from 1970 through 1976 as purchaser of equipment parts and services;" and sent employees to Texas for training on the purchased helicopters and to take delivery of the helicopters. App. to Petition, p. 3a.

5. If all the contacts of Helicol which relate to the purchase of Bell equipment are put aside, there remains only one contact of Helicol with Texas as discussed in respondents' brief, namely, a single contract discussion or negotiation in Texas between Mr. Restrepo of Helicol and Williams-Sedco-Horn.

Thus, the question before the Court is not one of factual resolution. The question is whether a single contract discussion or negotiation in Texas, or a single contract discussion or negotiation plus purchases from a Texas vendor constitute substantial and continuous activity in Texas, thereby constitutionally permitting Texas to require a nonresident defendant to defend in Texas a tort cause of action arising in Peru.

Respondents' comments on *Conn v. Whitmore*, 9 Utah 2d, 250, 342 P.2d 87 (1959) and *Marshall Egg Transport Co. v. Bender Goodman Co.*, 275 Minn. 534, 148 Minn. 2d 161 (1967) are reflective of the conflicts and confusion in the courts on the constitutional issue of *in personam* jurisdiction based upon contractual dealings between purchasers and sellers, even where the cause of action arises from the contractual dealings, as Mr. Justice White has pointed out in his dissent from the denial of a writ of certiorari in *Lakeside Bridge & Steel Co. v. Mountain State Construction Co.*, 445 U.S. 907 (1980).

If there is conflict on the issue of jurisdiction under a long arm statute where the cause of action arises from the contractual dealings within the forum state, the situation is even more urgent in cases such as the present case, where the cause of action did not even arise from the contractual dealings, namely, the discussion in Texas between Helicol and Williams-Sedco-Horn or the purchases by Helicol of helicopter equipment in Texas.

Respondents have missed the point concerning due process to be accorded to aliens. The concurring opinion of Justice Campbell, joined in by Justice McGee, was written in support of the decision and presumably was part of the rationale of the majority and for this reason was addressed by the dissenting justices. It was not until petitioner raised this point in its motion for a rehearing

that the language in Justice Campbell's opinion was changed from "[t]herefore due process application must be broader in scope" to "[t]herefore, due process in this case must be universal in its application." App. to Petition, p. 10a. This latter wording is a *nonsequitur*.

The issue petitioner wishes this Court to review is a legal issue of great importance:

Whether a nonresident alien corporation may constitutionally be subject to the jurisdiction of a Texas court on the basis of purchases made in the state and a single contract discussion or negotiation in Texas where the plaintiffs' causes of action did not arise from these contractual dealings in Texas.

As the dissenting justices of the Texas Supreme Court pointed out, the decision of the Texas Supreme Court establishes Texas "as a 'magnet forum', drawing to its courts the trial of any lawsuit involving a defendant who has ever made purchases in Texas." App. to Petition, p. 45a.

If foreign purchasers of American products are forced to defend foreign based causes of action, unrelated to their purchases of American products, this will inevitably have a detrimental effect upon United States export policy.

Purchases within a forum state, constitutionally and as a matter of policy, do not and should not constitute a basis for *in personam* jurisdiction over a nonresident defendant on a cause of action which did not arise from the purchases in the forum state.

**CONCLUSION**

For the reasons set forth above, and in the petition, petitioner urges that the petition for a writ of certiorari be granted.

THOMAS J. WHALEN  
*Counsel for the Petitioner*  
*Helicopteros Nacionales*  
*De Colombia, S.A.*  
1030 15th St., N.W.  
Suite 720  
Washington, D.C. 20005  
(202) 289-0500

Dated: February 15, 1983

*Of Counsel:*

CONDON & FORSYTH  
AUSTIN P. MAGNER  
CYNTHIA J. LARSEN



### CERTIFICATE OF SERVICE

I, Thomas J. Whalen, being over the age of 18 years and a member of the firm of Condon & Forsyth, hereby certify that I have this 15th day of February, 1983, served three copies of the foregoing brief of petitioner in reply to brief of respondents in opposition to petition for a writ of certiorari to the Supreme Court of Texas upon respondents Elizabeth Hall, *et al.*, the only parties required to be served, by mailing such copies to their attorney of record in a sealed envelope, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C., and addressed as follows:

George Pletcher, Esq.  
Helm, Pletcher & Hogan  
2800 Two Houston Center  
Houston, Texas 77002

/s/ Thomas J. Whalen, Esq.

## **APPENDIX**

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## APPENDIX

The following chart compares the statements of respondents relating to contacts of Helicol in Texas with the record and the opinions of the courts below relating to such subject matter.

Statement by Respondents	Reference from the Record
1. The provisions of the contract between Helicol and Williams-Sedco-Horn were negotiated in Houston, Texas.	The contract was not finalized or signed in the United States. <i>See</i> Appendix to Petition, pp. 66a-67a (Opinion of the Court of Civil Appeals).
2. The contract between Helicol and Consorcio "brought respondents' decedents and Helicol together."	No contract "brought respondents' decedents and Helicol together." Helicol's only contract was with Consorcio for transportation service in Peru. <i>See</i> Appendix to Petition, pp. 32a-33a (Opinion of the Supreme Court of Texas, Dissenting Opinion of Justice Pope).
3. Helicol sent maintenance personnel and pilots to Texas to be trained.	Helicol pilots did not receive general training from Bell Helicopter Company in Texas but rather received specific instruction in the operation of the equipment which Helicol had purchased from Bell, which was included in the purchase price of the helicopters. Maintenance personnel were sent to Bell for instruction in connection with the purchased equipment. <i>See</i> Appendix to Reply Brief, pp. 96a-97a (Transcript of Special Appearance).

4. Helicol had employees in Texas on a year round basis. From 1970 to 1976 fourteen trips to Texas were taken by twelve Helicol employees for training and technical consultation with Bell Helicopter Company on Bell equipment. A total of fifteen employees made a total of nine trips to Texas from 1970 to 1976 to ferry Bell helicopters to Colombia. During the same period, Mr. Restrepo made three trips to Texas. No Helicol employees were ever based in Texas. See Appendix to Reply Brief, pp. 105a-107a (Helicol's Answer to Interrogatory No. 8 propounded by Williams-Sedco-Horn).
5. Helicol directed First City National Bank of Houston, Texas, to make payments to Rocky Mountain Helicopters. Helicol issued no order to First City National Bank of Houston, Texas, and had no account there. Appendix to Petition, p. 66a.
6. Helicol directly secured services of Texas markets. In the context of the concurring opinion, the Supreme Court of Texas found a basis for jurisdiction in the fact that Helicol was attracted to Bell's market for helicopter equipment in Texas. Appendix to Petition, p. 9a (Opinion of the Texas Supreme Court, concurring Opinion of Justice Campbell). This is the issue in the case: Whether purchases from a Texas vendor can pro-

vide a basis for *in personam* jurisdiction.

7. Helicol sent officials to Texas on 26 occasions. All visits to Texas by Helicol employees, whether deemed to be "officials" or not, were visits to Bell Helicopter concerning purchases and related matters. See Appendix to Reply Brief, App. pp. 105a-107a.
8. In this multi-million dollar business in Texas, Helicol has availed itself of the privileges and benefits of Texas law. The "multi-million dollar business in Texas" consisted solely of purchases of helicopters and related training from Bell Helicopter.
9. Helicol's numerous and purposeful activities in and contact with Texas were grounded on the expectation, or necessity of invoking the benefits and protection of Texas law. The numerous and purposeful activities in and contact with Texas relate solely to the purchase of Bell equipment in Texas, except for the single meeting in Texas between Helicol and Williams-Sedco-Horn.

Transcript of Special Appearance Hearing  
Held February 28, 1978

**Testimony of Jorge Alberto Gonzalez**

**Mr. Goforth (Counsel for Helicol)**

The movant would call Jorge Alberto Gonzalez by deposition, taken on the 25th day of January, 1977, at the offices of Sewell, Junell & Riggs, before Diane S. Richer, notary public in and for Harris County, Texas, and being by me first duly sworn, testified by his oral deposition as hereinafter set out. . . .

**Transcript p. 6 line 23 through p. 7 line 7.**

\* \* \*

Q. "Would you state your full name, please, sir?

A. Yes; Jorge Alberto Gonzalez.

Q. Mr. Gonzalez, would you state your address?

A. My home address?

Q. Yes, sir?

A. Calle — C-a-l-l-e — 19, No. 1231, Bogota, Colombia.

Q. You are a citizen of what country, sir?

A. Colombia.

**Transcript p. 8 line 2 through p. 8 line 11.**

\* \* \*

Q. Are you employed by Helicol?

A. Yes, sir.

Q. You are paid by Helicol?

A. Yes, sir.

Q. Does your position as consejero require you to be in contact with the officers and employees of Helicol on a day-to-day basis?

A. Yes, sir.

Q. Do you advise the officers and employees of Helicol daily?

A. I would say yes.

Q. Do your functions or job require you to be familiar with all phases of the Helicol operations?

A. I would say yes, but mostly in connection with management policy rather than with the strictly technical aspect; the operations.

Q. Are you here today by agreement of the parties that you would come to Houston to give your deposition testimony?

A. Yes. I'm here because I was so instructed.

Q. By whom were you instructed?

A. Or requested to by the management of Helicol.

MR. PLETCHER (Attorney for Respondents): By whom, sir?

THE WITNESS: Management of Helicol.

Q. (By Mr. Goforth) Are you in Houston or in Texas for any purpose other than to attend this deposition and give your testimony?

A. No, sir.

Q. Have you been authorized by the management of Helicol to speak for Helicol today in giving your testimony?

A. I would say yes.

**Transcript p. 11 line 8 through p. 12 line 19.**

\* \* \*

Q. To your knowledge, sir, are any of the officers or directors of Helicol located inside the United States, or do they live inside the United States?

A. Officers or directors?



Q. Yes, sir.

A. No.

Q. Are any employees of Helicol located inside the United States?

A. No.

**Transcript p. 20 line 9 through p. 20 line 18.**

\* \* \*

Q. Mr. Gonzalez, does Helicol have any employees in Texas?

A. No, sir.

Q. Does Helicol ever perform any of its helicopter operations in Texas?

A. No, sir.

Q. Has Helicol ever recruited employees in Texas?

A. No, sir.

Q. Has it ever advertised for employees in Texas?

A. No, sir.

**Transcript p. 27 line 19 through p. 28 line 5.**

\* \* \*

Q. Has Helicol ever entered into a contract with anyone that provided for transportation wherein Helicol would provide transportation within the United States?

A. Within the United States, no.

**Transcript p. 31 line 8 through p. 31 line 12.**

\* \* \*

Q. "Mr. Gonzalez, have any of these contracts that you referred to awhile ago—I think you referred to one with Occidental and one with Texaco.

MR. PLETCHER: And Sunoco, Sun Oil Company.

Q. (By Mr. Goforth) And Sun Oil Company—have any of those been signed or negotiated in Texas?

A. No.

Q. Did any of those involve work to be performed by Helicol in the United States?

A. No.

Q. Did any of those involve work to be performed by Helicol in the United States?

A. No.

Q. Has Helicol ever performed any work in the United States?

A. No."

Transcript p. 35 line 21 through p. 36 line 11.

\* \* \*  
\* \* \*

**Testimony of Joesph W. Branson**

**By Mr. Graham (Counsel for Williams-Sedco-Horn)**

Q. Would you state your full name for the record please, sir?

A. Joseph W. Branson.

Q. Where do you live?

A. 6807 East 75th, Tulsa, Oklahoma.

Q. How old are you?

A. 62.

Q. What do you do for a living?

A. I am Administrative Manager for Williams International.

Q. What is Williams International?

A. An international pipeline construction company.

Transcript p. 44 line 4 through p. 44 line 16.

\* \* \*

Q. While you were in Houston at the offices of Williams-Sedco-Horn, did you ever receive any communication from someone who said they were a representative of Helicol?

A. I recall a telephone call two or three times from whom I presumed to be a woman in Los Angeles dunning me for collection of the Helicol invoices.

Q. Let's go back so I can understand what you told us. Who called you and where were you when you were called?

A. I was in Williams-Sedco-Horn office in Houston.

Q. How did that person identify herself?

A. I forget her name but she acted as a representative of Helicol and wanted to make collection of the invoice which we hadn't paid or we say at times would not have received the invoice from our Lima, Peru office.

Q. Did she have information that led you to believe she was who she said she was?

A. Yes, she would know the amount of the invoice.

Q. This wasn't just somebody that called in off of the street?

A. No, sir.

Q. Was her information accurate—"

MR. GOFORTH: I object. This is pure speculation as to anybody calling from Los Angeles or anywhere else.

THE COURT: I'll take your objection along with the case.

MR. GRAHAM: Continuing:

A. "Yes, we had not paid or the payment would be in transit.

Q. How many such phone calls did you receive?

A. I can't recall the exact amount, but three or four of them."

**Transcript p. 52 line 23 through p. 54 line 12.**

\* \* \*

**By Mr. Goforth (Counsel for Helicol)**

Q. This woman or whoever it was that called you, was it the same woman every time, or could you tell?

A. I thought it was.

Q. You couldn't really tell?

A. I can't recall.

Q. She was calling long distance? That is the one thing you are sure of, I guess?

A. Yes, sir.

Q. She wasn't calling from Houston?

Q. That is right.

Q. Did she tell you she was calling from where?

A. Los Angeles.

Q. She told you that?

A. Yes, sir.

Q. I don't guess you had any reason to believe that she was calling from anywhere in Texas?

A. No, sir.

Q. You don't know of any Helicol office in Texas, do you, sir?

A. No, sir.

Q. You don't know of any representative in Texas of Helicol?

A. No.

**Transcript p. 57 line 11 through p. 58 line 9.**

\* \* \*

**Testimony of Francisco Restrepo**

Q. Mr. Restrepo, would you state your name for the record, please, sir, and spell it, if you would?

A. My name is Francisco Restrepo, R-e-s-t-r-e-p-o.

Q. Mr. Restrepo, what is your address, sir?

A. My address is Calle Cententa 70 No. 6-76, Bogota, Colombia.

Q. Are you a citizen of Colombia?

A. Yes.

Q. Have you lived in Colombia your entire life?

A. Yes.

**Transcript p. 62 line 17 through p. 63 line 3.**

\* \* \*

Q. By whom are you employed, Mr. Restrepo?

A. By Helicol.

Q. What is your position with Helicol?

A. Manager.

Q. Tell us, if you will, what responsibilities you have as manager of Helicol?

A. I have to take care of the organization of the whole business of the company.

Q. Do you understand what chief executive officer is in the United States in the corporate terminology of the United States?

A. Yes.

Q. Are you the chief executive officer of Helicol?

A. I may say so.

**Transcript p. 63 line 19 through p. 64 line 8.**

\* \* \*

Q. Mr. Restrepo, in what country does Helicol operate?

A. Besides Colombia, Ecuador, Peru, some work in Brazil and Nicaragua.

Q. Has Helicol ever performed any work in the United States?

A. No.

Q. Has Helicol ever entered into a contract for the performance of any work in the United States?

A. No.

Q. Does Helicol have any offices in the United States?

A. No.

Q. I know this is a part of it, but I want to get it on the record, does Helicol have any offices in Texas?

A. No.

Q. To your knowledge, has Helicol ever had any offices in Texas?

A. No.

**Transcript p. 65 line 9 through p. 66 line 4.**

\* \* \*

Q. Had you had any prior dealings with Williams Construction Company? By you, I mean Helicol or Williams Brothers Construction Company.

A. What did you say?

Q. Had you had prior dealings or prior contracts with Williams Brothers?

A. Yes.

Q. Do you know where Williams Brothers is headquartered, sir?

A. Yes, in Tulsa, Oklahoma.

Q. Did you have what you considered to be a good relationship with Williams Brothers?

A. Yes.

Q. Did you know some of their officers and employees.

A. Yes.

Q. Where had you done work for Williams Brothers?

A. In Colombia and construction on the Trisalian Pipeline between the Corito Field and Pomaco, which is a Pacific port.

And later on in Ecuador, the construction of the Trans-Peruvian Pipeline—Trans-Ecuadorian Pipeline, excuse me.

Q. Had you ever done any work for Williams Brothers or Williams Construction Company in Texas?

A. No.

Q. Had you ever done any work for them in the United States?

A. No.

**Transcript p. 73 line 22 through p. 75 line 4.**

\* \* \*

**By Mr. Graham (Counsel for Williams-Sedco-Horn)**

Q. Mr. Branson testified that he was called by a woman that said she was a representative of Helicol asking when Helicol would be paid on certain invoices.

A. Who?

Q. Mr. Branson, who was the accountant in Houston for Williams-Sedco-Horn said he received telephone calls in Houston by a woman who said she was a representative of Helicol, asking when would Helicol be paid on certain invoices.

Have you understood my question?

A. Yes, I understand it, but I don't recall any woman at all. We don't have any womans represent Helicol in any place. [sic]

MR. GOFORTH: I think that adequately answers the question. But I want to enter an objection. I don't believe the testimony was as characterized by Mr. Graham.

THE COURT: The record speaks for itself. You'll have a chance to take him back.

Q. (By Mr. Graham) Did any representative of Helicol ever call Williams-Sedco-Horn in Houston inquiring about invoices?

A. No, not here. We don't have any representative in Houston at all.

Q. I'm not asking whether a Houston representative called, I am asking whether someone from Helicol telephoned Houston asking when the invoices would be paid.

A. I don't recall. No, not directly from my office. No.

Q. What about any of your other employees?

A. Maybe so, I don't know.

Q. It's certainly not out of the question, is it?

A. It's a possibility, yes.

Transcript p. 111 line 2 through p. 112 line 14.

\* \* \*

Q. I want to show you the one I want to look at. I will show you a document in the deposition upon written questions of Bell Helicopter. It appears to be a Telex No. 273 dated November



5, 1974. It's both in English and Spanish addressed to Mr. Jorge Gonzalez and it reads:

"Hernan De Los Rios Funcionario Helicol Llegara Esa Viernes 8. Hernan De Los Rios, Helicol officer, will arrive there Friday the 8th."

Meaning, I assume, Friday, the 8th of November. Can you tell us who Mr. De Los Rios is?

A. It's De Los Rios is second man in the maintenance activity of Helicol.

Q. Why was he going to Bell Helicopter four days after you had entered into an agreement to provide helicopters for Williams-Sedco-Horn?

A. I don't recall this, the reason for his travel.

Q. Was it related to the contract?

A. I don't recall.

Q. Is it possible?

A. I don't know. We have several people coming to the factory and back for many reasons. There is a possibility, but I don't know. I don't recall exactly.

Q. I understand that all of your helicopters or substantially all of your helicopters are purchased in Fort Worth?

A. Yes.

Q. And you have company people in Fort Worth almost all the time?

A. Not all the time, but often.

Q. When you left the meeting in Houston, did you call—you said you called Bell?

A. Yes.

Q. All right. Is one of the things that you did when you talked to Bell four days earlier or actually the day or a month

before this Telex was to make arrangements for Mr. De Los Rios to come up?

A. No. I don't think so, no.

**Transcript p. 119 line 16 through p. 121 line 10.**

\* \* \*

Q. I want to ask you, sir, about some answers to interrogatories.

Let me ask you a little more about your relationship with Bell Helicopter. All of your equipment, all of your helicopters are Bell equipment?

A. Mostly, yes.

Q. All of your pilots are trained in Fort Worth?

A. No.

Q. How many of your pilots are trained in Fort Worth?

A. Some and when we buy some new equipment, they train the pilots at the factory. Otherwise, we train in our own facility in Colombia.

Q. What about maintenance people, are they trained by Bell, too?

A. Some of them, yes.

Q. Of all of the training that your pilots and maintenance people get from Bell, they get in Fort Worth, Texas?

A. Some of it, because Bell has some groups traveling around and they are representatives Bell's in South America, Colombia, to train all the people.

Q. When we were talking about sending Helicol people back and forth between Bogota and Fort Worth, they were going up to see Bell for training?

A. Will you clarify the question, please?

Q. Let me ask it another way:

As a businessman, isn't one of your strong selling points, you understand me, about when you go into make a contract with an oil company, isn't it one of your selling points the fact that you use Bell equipment and you have factory trained pilots and factory trained maintenance people?

A. No. As a sales—no. No. We use any helicopter the client wants to use. Well, we are not mates, we are not like married with Bell.

Q. It doesn't hurt your business, though?

A. No. No, not at all. I am very pleased with the Bell equipment. But we will be able to operate any other type helicopter.

Q. It's true when you go to negotiate your deal with oil companies, you are very happy to tell them you have American trained pilots?

A. We have our own training facility and our pilots are very well known within the American and European companies.

**Transcript p. 125 line 2 through p. 127 line 2.**

\* \* \*

Q. Mr. Restrepo, also in the answers to interrogatories we asked your lawyers to tell us the names of Helicol people who were in the State of Texas during the last, I believe, five or six years. Your name is listed in the answer to interrogatories, that you were here December 11, 1975; September 12, 1973; and April 5, 1971, each time doing business with Bell Helicopters.\*

A. Buying equipment, yes.

---

\*The interrogatory and answer referred to by Mr. Graham are printed in full in this appendix at pp. 105a-107a.

Q. Did you talk to somebody about how to answer that interrogatory, did somebody ask you when you were in Texas so they could make this answer?

A. No. This is the first mention I hear of it. Maybe I have the record in the company. I don't know.

Q. My problem is that the answers about the number of times you were in Texas leaves out the meeting with Williams-Sedco-Horn. It's just not here. It happened in October of 1974. Do you have an explanation for why that meeting is left out when it got you here on three other dates?

A. No. Can you explain the question?

Q. We asked your company to tell us the dates its representatives were in Texas and they told us three different dates.

A. Who is "they"?

Q. Whoever prepared the answers on behalf of your company to our interrogatories. They do not list the meeting that you had with Williams-Sedco-Horn on October 4, 1974.

A. How was the question to the company?

Q. The question was from January 31, 1970, through the date of your answers to these interrogatories, please identify each and every time an employee, agent or representative of Helicol has visited the State of Texas and with regard to each please state the following, date, name and address of individual, reason for visit.

And part of the answer says Francisco Artego Restrepo, with your address, December 11, 1975; September 12, 1973; April 5, 1971, each time with business with Bell Helicopter.

And I want to know why in the answers to interrogatories we were not told about your trip to Houston and the meeting with Williams-Sedco-Horn.

A. I don't know. Officially I was invited to come to Tulsa. Maybe it's not in the records.

Q. Do you know who prepared the record?

A. Jorge Gonzalez.

Q. There is a full legal page of people who were in Texas during this period. Can you personally swear that there were not a whole lot of other people who likewise got omitted from your answers?

A. Say again?

MR. GOFORTH: That is improper.

THE COURT: Overrule the objection. I'm not sure it's of any big moment.

Q. (By Mr. Graham) Can you tell me what kind of training your people got at Bell, were they given training to become instructors for helicopter pilots so they could come back to Colombia and teach other people how to fly helicopters?

A. Most of our pilots come from the Colombian Air Force and they provide very good training, mostly in Bell equipment. So it's not a need to send the pilots out here and we specialize in some of our services that the factory cannot teach us how to do it, besides the general information. So we have our own instructors and we train our own people there. As soon as we buy a new equipment, we have the right to fly the helicopter for some time and receive some instructions. This is part of the deal when you buy helicopters.

Q. Is that included in the purchase price of the helicopter?

A. Yes.

Q. But you also paid Bell for additional training?

A. Not in pilots, for mechanics maybe. So all the major components, things like that.

Q. Do you pick up your helicopters at Fort Worth at Bell?

A. Yes.

Q. Do your pilots fly up here to Fort Worth, then fly the helicopter back?

A. Yes.

Transcript p. 130 line 9 through p. 134 line 8.

\* \* \*

**Cross Examination by Mr. Pletcher (Counsel for respondents)**

Q. What I want to be sure about is that we can rely upon the information that is already before the Court in the form of written questions to your company.

For example, there is a list of some thirty-three business trips to the State of Texas that did not include your trip here to secure the contract.

Now, do you know of any other business trips that Helicol people made to Texas for any reason at all, other than those answered in the written questions?

A. I don't know. I may say everything is there. Maybe it's some discrepancies.

Q. So far as you can tell us, as the general manager of that company, we can rely upon those answers?

A. Yes, sir, of course.

Transcript p. 134 line 22 through p. 135 line 14.

\* \* \*

MR. GRAHAM: So the record is correct, we would like to formally offer on the record the testimony that has been previously tendered to the Court, that is, the deposition of Charles James Novak, the interrogatories of Ben James Brown at Bell Helicopter Company; interrogatories submitted by Williams-Sedco-Horn and the answers to Helicol and Helicol's answers thereto the plaintiffs' interrogatories to Helicol, Interrogatory No. 75 and Helicol's answer to that.

And, the Court order ordering Helicol to produce the insurance policy called for by, I believe it's Paragraph 11, of the contract.

And we would like to note for the record the insurance policy has not been produced.

And the answers of Bell Helicopter Company to the plaintiffs' interrogatories.

THE COURT: 20 and 25?

MR. GRAHAM: Yes, sir.

MR. COFORTH: I would like to ask interrogatories, Bell Helicopter to the plaintiff and answers thereto, and 3, 13, 19, 20, 21, 36, 43 and 45.

THE COURT: They will be received.

Transcript p. 216 line 15 through p. 217 line 25.

\* \* \*

**Deposition of Charles James Novak**

**By Mr. Graham (Counsel for Williams-Sedco-Horn)**

Q. What is your full name?

A. Charles James Novak.

Q. Where do you live?

A. At 10184 Longmont, Houston.

Q. What do you do for a living?

A. I'm a professional engineer.

Q. Who do you work for?

A. Brown & Root, Inc.

Q. How long have you worked for Brown & Root?

A. Approximately six months.

Q. What did you do before you worked for Brown & Root?

A. I was employed by the Williams Companies in Tulsa, Oklahoma, for twelve years.

Q. What are the Williams Companies in Tulsa, Oklahoma?

A. The Williams Companies are a conglomerate corporation consisting of a foreign construction division, a pipeline transportation division, an agricultural plant, and food division.

Q. Have you ever been associated with a company or business called Williams-Sedco-Horn?

A. In September of 1974 I was appointed the general manager of Williams-Sedco-Horn to oversee the Houston office.

Q. Tell me what Williams-Sedco-Horn is or was.

A. Williams-Sedco-Horn was a joint venture organized to fulfill a contract for a crude oil pipeline from the jungles of Peru to the Pacific Ocean for Petro Peru, a state-owned oil company.

**Deposition Transcript p. 4 line 9 through p. 5 line 14.**

\* \* \*

Q. When you were in Peru, did you have a chance to meet any of the Helicol pilots?

A. I knew them all. I rode with them most of the time.

Q. To your knowledge did any of these pilots come to the state of Texas?

A. Some of them said they were going to.

Q. Where did they say they were going?

A. To Bell for training.

MR. GOFORTH: I object to that as hearsay.

Q. (By Mr. Graham) Was this at Fort Worth?

A. Yes.

Q. Had any of them told you they had been to Bell before?

A. I don't recall. Some of them said they were going.

MR. GOFORTH: I object to it as hearsay.



**Deposition Transcript p. 20 line 16 through p. 21 line 9.**

\* \* \*

Q. When you decided to use Helicol, did you consider the training of their pilots as one of the reasons you decided to use them, rather than the Peruvian air force?

A. When we looked at the job before we bid it, we rode with the Peruvian air force people and they were not very good. Basically, Peru or Latin America's attitude is "manana", so they are not going to do the work these other people will do and we couldn't afford to have a forty-percent operation when we needed a hundred-percent operation and Helicol could give us the hundred percent.

Q. Was it significant to you that Helicol had American-trained pilots?

A. They did not. They had Colombian pilots. They have been in business twenty-one to twenty-two years as a helicopter service company.

Q. They were Colombian Nationals, but they had been to Bell for training?

MR. GOFORTH: I object to that as leading.

MR. GRAHAM: Pass the witness.

**Deposition Transcript p. 24 line 12 to p. 25 line 10.**

\* \* \*

**By Mr. Goforth (Counsel for Helicol)**

Q. Now, how many times did you see Mr. Restrepo in the United States?

A. Only the one time.

Q. And he was here on this visit in October that you testified about?

A. Yes.

Q. That was the only time you ever saw him?

A. Yes.

Q. Now, have you ever seen anybody else from Helicol in Texas?

A. Not that I know of. No, sir.

Q. They might have, but you didn't see them?

A. They didn't come by and pay a special call to Williams-Sedco-Horn.

Q. Mr. Restrepo was the only person from Helicol that you ever saw in Texas while you were the general manager of the Williams-Sedco-Horn operation?

A. Right.

Q. The only person from Helicol that you ever saw in Texas was Mr. Restrepo?

A. Right.

Q. That was one time?

A. Yes.

Q. That was the meeting from 9:30 a.m. to 2:30 p.m. in October?

A. Approximately October.

Q. He was in and out?

A. Right.

**Deposition Transcript p. 29 line 20 through p. 30 line 23.**

\* \* \*

Q. Did you have continuous dealings with Helicol until the end of the contract period?

A. No, sir. The permits ran out on December 31, 1976, and all of the helicopters left the country.

Q. Up until that time, do you know of anybody else but Helicol that ever came to the United States?

A. No, sir.

Q. Did you deal with anybody from Helicol?

A. We did, down in Peru, all the time.

Q. Did you deal with them in Peru?

A. They had a manager of operations down there, just like myself, that took care of their business in Peru.

Q. What was his name, sir?

A. Oh, Lord—I can't tell you.

Q. Well, let me ask you this: Did he ever come to Texas?

A. Yes, he did. He came to Texas when he helped Rocky Mountain ferry the 214 down there.

Q. So, he was a pilot?

A. Well, he came as a ferry pilot. He came to someplace in the United States and I assume—I don't know where. I can't answer that, but he did come to help them ferry it down.

Q. So you don't know whether or not it was in Texas, just somewhere in the United States?

A. Right.

Q. Their headquarters were in Provo, Utah?

A. Right.

Q. He very easily could have gone to meet the helicopter in Provo, Utah?

A. Right.

Q. Do you know of any other occasion when he came to the United States?

A. No, not offhand. No.

Q. Any dealings that you had with him with regard to this contract were performed in Peru?

A. Yes. He came by the office all the time and we talked our problems out, first one thing and another.

Q. The fact of the matter is all of the dealings that you had with Helicol at any time with regard to this contract—

A. The operational part of it, right.

Q. —were in Peru?

A. Right.

MR. GOFORTH: I don't think I have any more questions.

QUESTIONS BY MR. PLETCHER:

Q. What I am trying to establish for my own purposes here for my client is what contacts Helicol had with the State of Texas and are you aware that Helicol bought its helicopters from Bell Helicopter in Fort Worth?

A. Only the fact that that's where Bell helicopters are made and as far as I know, that's the only source of sales.

Q. And that's the kind of helicopter they used?

A. Yes, the Bell 205.

Q. Are you familiar with the fact that helicopter pilots are trained at Fort Worth by the Bell Helicopter people?

A. Other than the pilots saying they were going to Bell for training.

Deposition Transcript p. 36 line 21 through p. 39 line 11.

\* \* \*

**Interrogatory No. 5 by Williams-Sedco-Horn addressed to Ben James Brown.**

**BEN JAMES BROWN**, the said witness, being duly sworn to testify the truth, the whole truth and nothing but the truth in

answer to the direct interrogatories as hereinafter indicated, deposes and says as follows:

No. 5. Have officials of Helicopteros Nacionales de Colombia, S.A. ("Helicol") ever met with officials of Bell Helicopter Company within the borders of the State of Texas?

ANSWER: Yes.

\* \* \*

**Interrogatory No. 8 by Williams-Sedco-Horn addressed to Helicol.**

8. From January 1, 1970 through the date of your answers to these interrogatories, please identify each and every time an employee, agent or representative of Helicol has visited the State of Texas, and with regard to each please state the following:

- a. Date;
- b. Name and address of individual; and
- c. Reason for visit

[Answer to Interrogatory No. 8.]

**Point No. 8**

**HELICOL PERSONNEL THAT HAS VISITED THE  
STATE OF TEXAS 1.970 to DATE.**

NAME	ADDRESS	DATE	PURPOSE OF VISIT
Capt. Agudel Francisco	Carrera 18 #106-73 Bogota.	April 6/70	Ferry air-craft to Colombia.
Capt. Carrasquilla Ricardo.	Trasv. 47 #101-A-55 Bogota.	Aug. 21/77	" "
Capt. Corredor Luis E.	Calle 37 #79-35 Bogota.	Aug. 21/77	" "
Capt. Gutierrez Jorge	Carrera 34 #94-53 Bogota.	April 14/70	" "
Capt. Gomez Mario	Diagonal 8a. #32-62 Girardot.	Dec. 14/73	" "
Capt. Diaz P. Abelardo	Carrera 56 #121-24 Bogota.	Jan. 13/74	" "
Capt. Diaz C. Miguel	Carrera 25 #31-74 Palmira (Valle)	April 14/70	" "

## POINT No. 8

HELICOL PERSONNEL THAT HAS VISITED THE  
STATE OF TEXAS 1.970 to DATE.

NAME	ADDRESS	DATE	PURPOSE OF VISIT
Capt. Kinderman B. Hans	Calle 87 #50-128 Barranquilla.	Jan. 13/74	Ferry air-craft to Colombia.
Capt. Martinez Gabriel	Calle 114 #27-79 Bogota.	Aug. 21/77	" "
Capt. Ovalle Esteban	Calle 47 Norte #5C-45 Cali (Valle)	Mar. 20/77	" "
Capt. Silva Luis Eduardo	Trasve.33 #119-03 Bogota.	Aug. 21/77	" "
Capt. Rivera Bernardo	Calle 32E #75B-24 Medellin.	Nov. 19/73	" "
Capt. Rincon Miguel	Trasv.13 Bis #127-17 Bogota.	April 6/70	" "
Capt. Jaime Pinzon	Calle 86 #7-86 Bogota.	Nov. 16/73	" "
Cap. Jaime Canal	Carrera 19 #82-58 Bogota.	Dec. 5/73	" "
Restrepo Ortega Francisco	Calle 70 #6-76 Bogota.	Dec. 11/75	Business with Bell Helicopter Co.
" " "	" "	Sept. 12/73	" " "
" " "	" "	April 5/71	" " "
Jorge Gonzalez	Calle 90 #12-31	Jan. 22/77	Legal Business
" "	" "	Nov. 30-71	Plant familiarizational Bell Helicopter
Carlos Diaz	Calle 76 #38C-29 Barranquilla.	Sept. 10-72	Training with Bell Helicopter Co.
Joaquin Escobar	Carrera 36 #82-27 Barranquilla.	Aug. 28/77	" " "

## POINT No. 8

HELICOL PERSONNEL THAT HAS VISITED THE  
STATE OF TEXAS 1.970 to DATE.

NAME	ADDRESS	DATE	PURPOSE OF VISIT
Jaramillo Alfonso	Carrera 97 #34-13 Fontibon.	Aug. 7/77	Training with Bell Helicopter Co.
Molina Hector	Calle 32 #1-114 Neiva.	Aug. 28/77	" " "
Montoya Guillermo	Calle 76 #38C-55 Barranquilla	Feb. 13/77	" " "
Jimenez G. Carlos	Calle 56 #44B-45 Barranquilla	Feb. 13/77	" " "
Mosquera Jorge	Calle 79B #42E-51 Barranquilla	Feb. 15/77	Technical consultation with Bell Helicopter Co.
" "	" "	Sept. 19/76	" " "
" "	" "	Feb. 17/75	" " "
Rocha Miguel	Carrera 38C #74-132 Barranquilla	Sept. 1/72	Training with Bell Helicopter Co.
Rocha Rafael	Carrera 38 #63B-09 Barranquilla.	Aug. 7/77	" " "
Del Valle Plinio	88-06-Parson Blud Apt. A-12 Jamaica NYC-11432	Nov. 21/74	" " "
Luqueta Angel	Calle 53 B#21-44 Barranquilla.	Nov. 21/74	" " "